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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 701

MAURICE A. HUTCHESON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The *per curiam* opinion of the court of appeals (R. 188) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on December 7, 1960 (R. 188). A petition for rehearing was denied on January 9, 1961 (R. 199). The petition for a writ of certiorari was filed on February 7, 1961. The jurisdiction on this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner, who unequivocally disclaimed reliance upon the privilege against self-incrimination, was entitled to refuse to answer pertinent questions of a congressional committee because his testimony might relate to a state prosecution against him.

2. Whether the committee's questions and directions to answer were sufficiently clear to support petitioner's conviction for contempt based on his refusal to answer.

3. Whether petitioner's refusal to answer was excused because he acted on advice of counsel.

STATEMENT

Having waived a jury trial (R. 1), petitioner was convicted in the United States District Court for the District of Columbia on an eighteen-count indictment charging violation of 2 U.S.C. 192, in that he had refused to answer eighteen questions put to him by the Senate Select Committee on Improper Activities in the Labor or Management Field (R. 2a-4, 172-173). He was sentenced to six months' imprisonment and to pay a fine of \$500 (R. 186-187). The court of appeals affirmed the judgment.

The pertinent evidence adduced at the trial may be summarized as follows:

On January 30, 1957, the Select Committee was authorized by the Senate to conduct an investigation into criminal or improper practices in labor-management relations (R. 174). In 1958, petitioner, the president of the United Brotherhood of Carpenters (hereinafter called the Union), Frank Chapman, the Union's general treasurer, and O. William Blaier, its

second general vice-president, were indicted in Marion County, Indiana, for conspiracy to bribe, and bribery of an Indiana highway official to approve the state's purchase of a right-of-way over certain land owned by them (R. 179-186).

At the opening of public hearings on June 4, 1958, the chairman stated that the committee had heard a great deal of testimony regarding the misuse of union funds by union officials, and that the committee was still pursuing that subject. As part of the investigation, he said that the committee would investigate, *inter alia*, financial transactions between the Union and one Maxwell Raddock, a businessman (R. 9-10, 157).

Petitioner stipulated that on May 20, 1958, he had been served a subpoena requiring his appearance before the committee on June 2, 1958, and that, by agreement with the committee, the return date was changed to June 26. Petitioner was present on that date, as well as on June 27, the date he was called as a witness (R. 8).

On June 26, after Raddock, who was then the witness, had invoked his Fifth Amendment privilege against self-incrimination as to certain questions (R. 15-18), committee counsel disclosed some "background information," to avoid any "doubt as to the subject matter being inquired into, and so that the witness [Raddock] may be so apprised * * *" (R. 18). This information was that, in the summer of 1957, funds of the Union and the influence of certain labor union officials had been employed to frustrate petitioner's indictment in Lake County, Indiana, for bribery of a state highway official—the alleged

bribery which later became the basis for the indictment in neighboring Marion County. More specifically, the committee had information that, in June 1966, petitioner, Frank Chapman, and O. William Blaier had sold land to Indiana for a highway at a profit of \$78,000 on a \$20,000 investment; that part of the proceeds of this sale were allegedly paid by Chapman to the Indiana Highway Commission and a deputy in the right-of-way office of the Indiana Highway Department; that shortly after this matter had been put before the Lake County, Indiana, grand jury, in the summer of 1967, the county prosecutor, Metro Holovachka, announced that no indictments would be forthcoming because of "[a] lack of jurisdiction." Holovachka announced at that time that Union officials had made restitution to the state of the \$78,000 through a lawyer whom he refused to identify (R. 18-19).

Committee counsel then stated that the investigation was directed at determining the authenticity of the above information (R. 19-20). As the chairman put it, "the interest of this committee [is] * * * to ascertain again whether the funds or dues money of union members is being misappropriated, improperly spent, or whether officials in unions are using their positions to intimidate, coerce, or in any way illegally promote transactions where the public interest is involved" (R. 20). Following this explanation, Raddock again refused, on the grounds of the Fifth Amendment, to answer all questions concerning his activities in aborting the Lake County investigation (R. 21-22, 24-26, 40-41).

That same day, June 26, 1958, Michael Sawochka, Secretary Treasurer of the Teamsters Union, Local 142, Gary, Indiana, and Charles Johnson, president of the New York District Council of the Carpenters Union, each invoked the Fifth Amendment as to his role in the termination of the Lake County investigation (R. 44-48; 51-52). Joseph Sullivan, an attorney for the Teamsters Union in Gary, Indiana, invoked the attorney-client privilege as to similar inquiries (R. 54-73). O. William Blaier, the second general vice-president of the Union, and petitioner's co-defendant in the Marion County indictment, was then called as a witness. Before Blaier's questioning began, his counsel advised the committee that he would not answer questions concerning the subject matter of the indictment or matters relating thereto (R. 74-75). The chairman noted that, while the committee had jurisdiction, it would not interrogate the witness as to the subject matter of the Marion County indictment (R. 75). Thereafter, despite the chairman's ruling that particular questions did not relate to that indictment, but to later events dealing with the termination of the Lake County investigation (R. 82-84), Blaier persisted in his refusal to respond on the ground that his answers might be used against him in the prosecution of the pending indictment (R. 83). At one point the chairman indicated that Blaier could invoke his privilege against self-incrimination (R. 83-84).

Petitioner appeared for the first time in a testimonial capacity before the committee on the next day, June 27, 1958 (R. 86-87). At the outset, his

counsel assured the committee that petitioner would not resort to the "guarantees of the Fifth Amendment" (R. 88). Petitioner relied, in refusing to answer questions, on the claim that the committee was without authority to make any inquiry in any way relating to the matters covered by the Marion County indictment (R. 88-91). The chairman replied that any issue raised by counsel with respect to the committee's jurisdiction or the propriety of the questions would be ruled on as the issues arose (R. 91). After petitioner had been asked, and had answered, a series of questions concerning his career with the Brotherhood of Carpenters (R. 91-94), he was asked how long he had known Max Raddock. When his counsel inquired whether this related to the Lake County transactions (R. 94), the chairman stated that petitioner would be interrogated about "the use of union funds in a project which, on the face of it at least, appears to have the objective which was to obstruct justice," but that petitioner would not be asked about any act covered in the Marion County indictment (R. 94).

Petitioner was then asked the question which formed the basis of count one of the indictment—"Has he [Raddock] received from the union payments for acts performed in your behalf and for you as an individual" (R. 131). Petitioner refused to answer the question on the ground that the question related "solely to a personal matter, not pertinent to any activity which this committee is authorized to investigate, and also it relates or might be claimed to relate to or aid the prosecution in the case in which I am

under indictment, and thus be in denial of due process of law" (R. 122). The chairman ordered that petitioner answer, pointing out that the question was well within the jurisdiction of the committee, "to ascertain the conduct of this witness with respect to his position in a fiduciary capacity as trustee of union money" (R. 122). Petitioner persisted in his refusal to answer. Thereafter, on the same grounds, he refused to answer seventeen succeeding questions which make up the remainder of the counts in the indictment (R. 2A-4, 124-128, 134-135, 138, 143-149). The chairman of the committee pointed out several times that petitioner was not being interrogated concerning the subject matter of the Marion County indictment (R. 94, 123, 126-127, 130, 147). Senator Ervin said at the hearing: "We have repeatedly stated to Mr. Hutcheson, that we are not asking him to make any revelations about any circumstances that have any connection whatever with the indictment pending against him, but we are asking him about the use of union money under circumstances entirely disassociated from the matters out of which the indictment arises" (R. 130). Throughout the questioning, petitioner expressly disclaimed reliance upon the privilege against self-incrimination (R. 124, 125-126, 128, 133, 144-145).

ARGUMENT

1. Petitioner's primary argument is that he could, on due process grounds, refuse to answer those questions which might have disclosed information in some way relevant to the trial of the pending Indiana indictment, even though he unequivocally disclaimed re-

lience on the privilege against self-incrimination (Pot. 11-33, 25-37). Whether or not petitioner is correct in his view that the information solicited by the committee was relevant on the pending state charge, he is in error in asserting that he was justified for this reason in maintaining silence. If he chose not to rely upon the privilege, petitioner would have been justified in refusing to answer the committee's questions only if the committee had no power to ask them, or if the questions were not pertinent to the investigation that the committee was authorized to conduct. In *Hickair v. United States*, 370 U.S. 353, this Court made clear that a congressional committee can investigate matters which relate to pending criminal cases. There, the witness, having specifically alleged reliance upon the privilege against self-incrimination, refused to answer pertinent inquiries on the ground that the committee had no power to delve into matters relating to law suits in the federal courts in which the witness was a defendant. In rejecting the validity of this argument this Court said (*id.* at 355): "It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committee, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits." Cf. *Barenblatt v. United States*, 350 U.S. 100, 135-136; *W. Whittaker v. United States*, No. 57, this Term, decided February 27, 1961.

The questions petitioner refused to answer were related to a valid legislative purpose and were perti-

nent to the subject matter under investigation. The Select Committee had been authorized by Congress to investigate improper practices or activities in the labor-management field and to determine if any changes in the law was required (R. 174, 177-178). Certainly, this is a valid legislative purpose. The questions which petitioner refused to answer were clearly within this grant of authority since they related to the issue of whether union funds were being spent to bribe state officials. The committee chairman, one of its members, and its counsel, all stated during the hearing, while petitioner was either testifying or at least present, that the purpose of the hearing was to discover whether union officials were abusing their position to spend union money for their own purposes (see the Statement, *supra*, pp. 3, 4, 6, 7). The fact that this information also related to a pending criminal indictment is not material. *Sinclair v. United States, supra.*¹

¹ *Delaney v. United States*, 199 F. 2d 107 (C.A. 1), relied upon by petitioner (Pgs. 22-23), does not aid him. In that case, after the defendant, a Collector of Internal Revenue for the District of Massachusetts, had been indicted for improper activity relating to the collection of taxes, a House committee instituted an intensive investigation into his, and other collectors', alleged dereliction. Many of the witnesses who appeared before the committee (the defendant was not called) had testified before the grand jury in the defendant's case, and the hearings afforded the public a preview of the prosecution's case. While the court of appeals held that due to this publicity the defendant had been entitled to a continuance of his trial, the court made clear that it was not challenging the power of the committee to conduct its investigation. The court said (*id.* at 114): "We mean to imply no criticism of the action of the King Committee. We have no doubt that the committee acted lawfully, within the constitutional powers of Congress duly delegated to it."

Petitioner argues that he could not properly invoke the privilege against self-incrimination since the questions related to a state charge. But, whether or not the committee could have disallowed the claim of privilege (cf. *United States v. Wardock*, 284 U.S. 141), it is plain that, as petitioner well knew, it would not have done so. Other witnesses called before the committee during this investigation while petitioner was present were allowed to claim the privilege in refusing to answer questions relating to the Lake County investigation. And Mr. Blaier, a co-defendant of petitioner's in the Marion County indictment, was specifically informed that he could exercise his privilege if he so desired (see the Statement, *supra*, pp. 3-5).

Petitioner also argues that he could not claim the privilege before the committee because that could be the subject of an adverse inference in his Indiana trial. But even if questions relating to the "fixing" of the Lake County indictment were, as petitioner claims (and contrary to the committee's views), relevant to the charges in the Marion County indictment, his refusal to answer the questions on grounds other than the privilege would be equally relevant. Moreover, petitioner's refusal to answer on other grounds removed any problem as to what inferences can properly be drawn from a claim of privilege under the Fifth Amendment. Cf. *Grunewald v. United States*, 353 U.S. 391, 415-424. And petitioner never informed the committee that he desired to invoke the privilege but was afraid that it would be used against him on a later trial. On the contrary, he unequivocally dis-

claimed reliance upon it. His present claim is thus a mere afterthought. It is an attempt to obtain the benefits of the privilege without asserting it.

2. There is no merit in petitioner's claim (Pet. 23-25) that, since the committee had ruled that it would not interrogate him concerning the subject matter of the Marion County indictment, the questions and directions to answer lacked the clarity necessary to support a contempt conviction. While it is true that the chairman stated that the committee would not inquire about the Marion County indictment, he repeatedly made clear that the committee would inquire as to acts occurring subsequent to the activities underlying the indictment which related to the use of union funds and the activities of union officials to abort the Lake County investigation (see the Statement, *supra*, pp. 5-7). There was no confusion as to the fact that the committee intended to inquire, and did inquire, of petitioner as to the circumstances relating to the Lake County matter.

Even if, as petitioner claims, some of the questions which directly concerned the Lake County transactions also related to the Marion County indictment, petitioner was specifically ordered by the committee to answer the questions on which he was indicted and convicted. We have seen above (pp. 8-9) that the committee could properly question petitioner about the facts underlying the Marion County indictment as part of its investigation of improper activities in the labor-management field. Insofar as the questions petitioner refused to answer related to the Marion County indictment as well as the Lake County matter, the committee's

specific order to answer was definitive that the committee considered the question as part of the investigation, an investigation which the committee had authority to make.

3. Petitioner also claims (Pet. 32-33) that he was not in contempt in refusing to answer because he was acting on the advice of counsel that the questions related to the Indians indictment. It is well established that conviction under 2 U.S.C. 192 requires only proof of intentional refusal to answer, not proof of bad faith, and that therefore reliance on the advice of counsel is not a valid defense. *Sinclair v. United States*, *supra*, 279 U.S. at 299; *Braden v. United States*, No. 54, this Term, decided February 27, 1961. Here, petitioner's deliberate refusal to answer is clear from the record, whether or not he relied on the advice of counsel. While petitioner suggests that the ground for his counsel's advice was different from that in *Sinclair*, this is immaterial since the holding of that case (as well as *Braden*) is that good faith, regardless of its basis, is no defense.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MARCH 1961.